

Court No. - 72

**Case :- CRIMINAL MISC ANTICIPATORY BAIL
APPLICATION U/S 438 CR.P.C. No. - 11615 of 2023**

Applicant :- Shivam Gupta

Opposite Party :- State of U.P.

Counsel for Applicant :- Sudhir Kumar Tiwari

Counsel for Opposite Party :- G.A.

Hon'ble Krishan Pahal,J.

1. List has been revised.
2. Heard Sri Sudhir Kumar Tiwari, learned counsel for the applicant, Sri Bhishm Pal Singh, learned counsel for the informant and Sri Anit Kumar Shukla, learned A.G.A. for the State as well as perused the record.
3. The present anticipatory bail application has been filed on behalf of the applicant in Case Crime No.304 of 2021 registered under Sections 307, 504 and 506 I.P.C. at Police Station-Kotwali Dehat, District Etah with a prayer to enlarge him on anticipatory bail.
4. As per prosecution story, the applicant alongwith his brother Ishu Gupta and father Satyadev are stated to have fired at the informant. The said fire is stated to have somehow did not hit him on 28.08.2021.
5. Learned counsel for the applicant has stated that the applicant was enlarged on anticipatory bail till the submission of report under Section 173(2) Cr.P.C. by this Court vide order dated 4.12.2021. The applicant has not misused the opportunity granted earlier and has co-operated during investigation.
6. Learned counsel for the applicant has stated that no time of offence has been mentioned in the FIR. Admittedly, it is no injury. In support of his submission, learned counsel has placed reliance upon the judgement of the Apex Court in ***Aman Preet Singh vs. C.B.I. through Director AIR 2021 SC 4154***, wherein the Court has clearly held that if a person, who is an accused in a non-bailable/cognizable offence, was not taken into custody during the period of investigation, in such a case, it is appropriate that he may be released on bail as the circumstances of his having not been arrested during investigation or not being produced in custody is itself sufficient to entitle him to be

released on bail.

7. Several other submissions have been made on behalf of the applicant to demonstrate the falsity of the allegations made against him. The circumstances which, as per counsel, led to the false implication of the applicant have also been touched upon at length. There are no criminal antecedents of the applicant. The applicant has apprehension of his arrest. Learned counsel for the applicant undertakes that he has co-operated in the investigation and is ready to do so in trial also failing which the State can move appropriate application for cancellation of anticipatory bail.

8. Per contra, learned A.G.A. and learned counsel for the informant have vehemently opposed the anticipatory bail application but unable to dispute the submissions raised by the learned counsel for the applicant.

9. On due consideration to the arguments advanced by learned counsel for the applicant as well as learned A.G.A. and considering the nature of accusations and antecedents of the applicant, the applicant is liable to be enlarged on anticipatory bail in view of the judgment of Supreme Court in the case of "***Sushila Aggarwal Vs. State (NCT of Delhi)***, (2020) 5 SCC 1". The future contingencies regarding the anticipatory bail being granted to applicant shall also be taken care of as per the aforesaid judgment of the Apex Court.

10. In view of the above, the anticipatory bail application of the applicant is allowed. Let the accused-applicant- **Shivam Gupta** be released forthwith in the aforesaid case crime (supra) on anticipatory bail till the conclusion of trial on furnishing a personal and two sureties each in the like amount to the satisfaction of the court concerned with the following conditions:-

- (i). that the applicant shall make himself available for interrogation by a police officer as and when required;
- (ii). that the applicant shall not, directly or indirectly make any inducement, threat or promise to any person acquainted with the facts of the case so as to dissuade him from disclosing such facts to the court or to any police officer or tamper with the evidence;
- (iii). that the applicant shall not leave India without the previous permission of the court;
- (iv). that in case charge-sheet is submitted the applicant shall not tamper with the evidence during the trial;
- (v). that the applicant shall not pressurize/ intimidate the prosecution witness;
- (vi). that the applicant shall appear before the trial court on each date fixed unless personal presence is exempted;
- (vii). that in case of breach of any of the above conditions the court

concerned shall have the liberty to cancel the bail.

11. It is made clear that observations made hereinabove are exclusively for deciding the instant anticipatory bail application and shall not affect the trial.

Order Date :- 19.10.2023

Ravi Kant

(Krishan Pahal, J.)